

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NEOU TEA,

Plaintiff,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendant.

CASE NO. C07-0053RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on a motion for summary judgment (Dkt. # 15) from Plaintiff Neou Tea, and a cross-motion to dismiss (Dkt. # 27) from Defendant United States Citizenship and Immigration Services (“USCIS”). Neither party has requested oral argument. For the reasons stated below, the court DENIES both motions and enters several case management orders.

II. BACKGROUND & DISCUSSION

Mr. Tea is a 75-year-old Buddhist monk. He came to the United States from Cambodia early this decade. Beginning in 2002, he obtained “R-1” religious worker status from USCIS’s predecessor, Immigration and Naturalization Services. The sponsoring organization for his religious worker visa was the International Buddhist

1 Temple in Los Angeles, California. Jacobson Decl. (Dkt. # 27, Ex. 1) ¶ 3. His R-1 status
2 was set to expire on June 7, 2005. *Id.*

3 In February 2004, Mr. Tea left Los Angeles and came to Seattle, where he began
4 working at the Khmer Buddhist Society. He continues that work today. As the court will
5 soon discuss, the circumstances of Mr. Tea's move from Los Angeles to Seattle are
6 disputed.

7 In March 2005, the Khmer Buddhist Society filed an I-129 Petition for
8 Nonimmigrant Worker on Mr. Tea's behalf. Compl. (Dkt. # 3), Ex. 1. In what was
9 apparently an error made by a Khmer Buddhist Society representative unfamiliar with the
10 I-129 form, the form indicated that it was being filed on behalf of a petitioner residing
11 outside the United States and seeking approval from an American consulate. *Id.* The
12 form also indicated, however, that Mr. Tea had already been granted R-1 status, and that
13 his status had not yet expired. *Id.* The Khmer Buddhist Society sent the form to
14 USCIS's Nebraska Service Center. The USCIS responded with a "Request for Evidence"
15 letter that noted that the Nebraska Service Center had jurisdiction over the application
16 only if the applicant was merely seeking an extension of previously granted non-
17 immigrant status. Compl., Ex. 2. The Khmer Buddhist Society sent the letter back to
18 USCIS, with a handwritten annotation stating: "Petitioner wishes to transfer/extend
19 nonimmigrant status of beneficiary." *Id.* For reasons not clear from the record, USCIS
20 nonetheless denied the I-129 petition on August 26, 2005, indicating in its denial letter
21 that Mr. Tea was required to file his petition at an American consulate. Compl., Ex. 3.

22 There is no evidence regarding what transpired with Mr. Tea in the 16 months
23 between the USCIS's denial of his petition and his decision to file this lawsuit in January
24 2007. Mr. Tea has apparently filed an I-360 Special Immigrant petition whose approval
25 has been delayed pending the resolution of this dispute. There is no evidence in the
26 record regarding this petition, however, and no evidence that it has any bearing on the
27 resolution of the case before the court.

1 In his complaint, Mr. Tea invoked the Administrative Procedures Act to force the
2 USCIS to rescind its denial of his I-129 petition. In April 2007, the USCIS reopened the
3 petition on its own after determining that the Khmer Buddhist Society had made a clerical
4 error indicating that consular processing was necessary. Jacobson Decl. ¶ 6.

5 On June 4, 2007, USCIS formalized its decision to reopen the I-129 petition, but
6 denied it nonetheless. Jacobson Decl. ¶ 7; Dkt. # 15, Ex. 2. The denial letter explained
7 that the USCIS had resolved the errors with respect to the consular processing issue, but
8 had found new grounds for denying the petition on its merits. Dkt. # 15, Ex. 2.
9 Specifically, based on Mr. Tea's statements in the I-129, it found that he had lost his R-1
10 status by moving to Seattle in 2004. *Id.* USCIS cited 8 C.F.R. § 214.1(r)(6), which states
11 that an "unauthorized change to a new religious organizational unit" will constitute a
12 failure to maintain status" *Id.*

13 The parties' positions in the motions before the court are as follows: Mr. Tea
14 contends that his move to Seattle was not a change in his employment or a move to a new
15 religious unit, but rather a decision by the International Buddhist Temple to send him to
16 the Khmer Buddhist Society to help them. He argues that USCIS should have sent him
17 either a request for evidence or a notice of intent to deny his application, providing him
18 with an opportunity to produce additional evidence regarding his sponsorship. He moves
19 for summary judgment, arguing that the court should order USCIS to rescind its denial
20 and send Mr. Tea either a request for evidence or a notice of intent to deny.

21 USCIS contends that this lawsuit is now moot. Mr. Tea sued to address the
22 alleged error in the USCIS's initial denial of his petition, and that issue has been
23 resolved. The USCIS requests that the court dismiss the action for that reason. The
24 USCIS notes that it told Mr. Tea's counsel in April 2008 that he should file a motion to
25 reopen his I-129 petition if he had evidence that his Seattle employment did not violate
26 the terms of Mr. Tea's R-1 visa. Jacobson Decl. ¶ 10. For reasons not apparent from the
27 record, Mr. Tea has not moved to reopen the petition.

1 The court must deny Mr. Tea's summary judgment motion. Mr. Tea cites no legal
2 authority establishing that the court can order USCIS to rescind its denial of the I-129
3 petition and request new evidence relating to Mr. Tea's sponsorship. Mr. Tea's briefing
4 gives the court no basis to conclude that it has authority to grant relief. This does not
5 mean that the court cannot grant relief; it means that Mr. Tea's counsel must do a
6 substantially better job providing legal authority. Moreover, the court reiterates that, on
7 the record before it, counsel's refusal to move to reopen the I-129 petition is inexplicable.

8 The court must also deny the USCIS's motion to dismiss. The court agrees that
9 the initial dispute between the parties, the dispute described in Mr. Tea's complaint, has
10 been resolved. This is not the end of the court's inquiry, however. There is no question
11 that the parties have an unresolved dispute over Mr. Tea's I-129 petition. That this
12 dispute is not described in Mr. Tea's complaint is not dispositive, as the court has both
13 jurisdiction and discretion to consider new disputes that arise between parties as an action
14 evolves. In the immigration context, the court has routinely granted immigrants' motions
15 to amend their pleadings when action by the government moots their original claims, but
16 gives rise to new ones. *See, e.g., Minhas v. Christian*, Case No. C07-339RAJ, Dkt. # 42
17 (granting plaintiff's motion to supplement pleadings to assert new controversy when
18 original controversy became moot). The court's experience in similar immigration
19 matters suggests that the interests of justice are best served by allowing an immigrant to
20 pursue disputes to finality, even where intervening government action moots the specific
21 claims that the immigrant originally asserted. The government's preferred approach
22 would subject immigrants to the cost and delay of filing a new action each time the
23 government acts, and provide a perverse incentive for piecemeal government action.

24 The burden is now on Mr. Tea's counsel to take the steps necessary to pursue
25 relief on his client's behalf. The court therefore orders as follows:

- 26 1) Because it appears that the parties may be able to resolve this action amicably,
27 the court will grant the parties a period to discuss a settlement.

- 1 2) No later than February 23, 2009, Mr. Tea shall file an amended complaint and
2 a stipulation to permit the amendment. If USCIS declines to stipulate to the
3 amended complaint, Mr. Tea shall file a motion to amend by the same date.
- 4 3) If USCIS stipulates to the amended complaint, Mr. Tea shall file a summary
5 judgment motion no later than March 2, 2009. If USCIS does not stipulate, the
6 court will set a deadline for filing a summary judgment motion, if necessary, in
7 its order resolving Mr. Tea's motion to amend. In either event, the court
8 expects Mr. Tea to present a detailed motion, including appropriate legal
9 authority, establishing his entitlement to the relief requested and the court's
10 authority to grant that relief.
- 11 4) Failure to comply with any of these deadlines will result in an order to show
12 cause why this action should not be dismissed for failure to prosecute.

13 **III. CONCLUSION**

14 For the reasons stated above, the court DENIES Mr. Tea's motion for summary
15 judgment (Dkt. # 15) and DENIES USCIS's motion to dismiss (Dkt. # 27).

16 DATED this 15th day of January, 2009.

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19 The Honorable Richard A. Jones
20 United States District Judge
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